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STATE OF WASHINGTON

WASHINGTON STATE LIQUOR CONTROL BOARD

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TO: Bill Wegeleben, OFM

FROM: M. Carter Mitchell, PIO 

DATE: September 10, 1993

RE: WSLCB 1994 LEGISLATIVE PACKAGE

There are several proposals the Liquor Control Board would like to submit to the Legislature in January, 1994. We regret the tardiness of our package, but as I have explained, in this transitional period, there have been a few "bumps" that needed to be smoothed out before our proposals could be submitted. We respectfully extend our appreciation for being allowed a late submittal. Even after extensive discussions before submittal, I anticipate there might be a couple of changes in the form of deletions to the draft of our omnibus license/enforcement bill (Z-1074.1). Some feedback from outside interests indicates there may be some fine-tuning necessary in order to relieve controversy.

1. OMNIBUS LICENSE/ENFORCEMENT (Z-1074.1/94)

One (Z-1074.1) is an omnibus bill for improvements of the licensing and enforcement (regulatory) statutes. Several of the proposals included therein were approved last year in the agency-request legislation (HB 1330) which was held in Senate Labor and Commerce after passing the House. We have been assured that there will be no problems with it this session and intend to renew the request with the modifications as indicated in Z - 1074.1. (One provision, eliminating residency requirements, would help resolve a problem indicated as discriminatory within the GATT issue.)

In Sec. 1, there is amendatory language to RCW 66.20.200 which would make it a violation for anyone to use someone else's identification in order to gain admittance to premises or portions of licensed premises classified as off-limits to persons under 21. Currently, it is not until the person has actually entered the premises and attempted to purchase alcoholic beverages with bad identification that they may be cited. This causes problems for many premises and law enforcement officers who must wait for a person to gain admittance and attempt to buy before taking action, even though the premises' staff or officers believe the person to not be of legal drinking age. The minor amendatory language corrects gender language to make it neutral. We do not anticipate any opposition to this proposal from industry but could expect some from the ACLU or

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Sec. 2 offers the recommendation to amend RCW 66.24.350 would permit licensees holding a class D license which allows sales of beer in bottles for on-premises consumption, to sell the product without first opening the individual containers. This has tended to be a problem in the past as some golf courses have class D licenses allowing beer to be sold for consumption on the premises (which includes the entire course), but requires the bottles to be opened before they are removed from the point of purchase. Obviously, someone wanting to have two or three bottles of beer for consumption on a golf course is not going to want them opened and thus sloshing around as they traverse the course. The Board does not perceive this amendment as promoting or encouraging consumption and, in reality could view it as encouraging more responsible consumption by offering the opportunity to take unconsumed product home at the end of a round of golf. No fiscal impact would result from adoption of this section.

Sec. 3 modifies RCW 66.24.490 which pertains to the class I (caterer's) license. The intention in this amendatory language is to broaden those eligible for a class I from class H to class A, C and D licensees (beer and wine restaurants). There are no anticipated problems with this proposal and it is made in response to requests from licensees who have asked for the license and have been advised it is available to class H licensees only. Many beer and wine restaurants (A, C and D licensees) currently cater food service and wine or beer service is provided through the individual hosting the function using a banquet permit. The new language allows for a restaurant to provide full-service catering without requiring the hosts to acquire separate permits and serve liquor separately. While it is anticipated there would be an increase in the number of such licenses, it is not expected to have any significant impact on revenue.

Sec. 4. makes changes to RCW 66. 28.070 to allow special occasion licensees to purchase both beer and wine from wholesalers or retailers. Currently, the law requires purchases from wholesalers only. Many special occasion licensees have permits for Sunday or holiday events and thus must purchase the products and store them a day or two until the event. If they wanted to purchase products from a retailer the day of the event, there would be no problem. Wholesalers would still be making the sale to the retailers and the retailers would be selling to the special occasion licensees. The additional outlet to the special occasion licensees would be a convenience only with no additional revenue being expected. Consumption would not increase as this is a convenience to existing licensees.

Sec. 5 modifies RCW 66.28.140 which currently allows people to remove family produced wine from their homes for exhibition or use at wine tastings or competitions. The Board recommends that beer be included in this statute as more and more requests are being received from people who have become involved in home brewing efforts. Allowing such activities for wine and excluding beer is an unfair situation which needs to be corrected.

Sec. 6 would amend RCW 66.44.200 to make it illegal for a person who is apparently under the influence of liquor to purchase, attempt to purchase or consume liquor on a licensed premises. While this seems to revive the drunk in public statutes repealed years ago, it does so but on a very limited basis only...upon liquor licensed premises. On these premises, it is against the law to serve someone who is intoxicated or to permit someone who is intoxicated to consume alcoholic beverages. Making it illegal to allow someone who is displaying signs of apparent intoxication to buy or attempt to buy will do several positive things: licensees will see proactive enforcement efforts at holding intoxicated persons accountable for their deeds and reinforce the Board's efforts at bring about greater compliance by licensees to overservice prohibitions. In many instances, being able to take someone out of a premises because they are intoxicated and have attempted to purchase more alcohol will reduce complaints, relieve dangerous conditions and create a more positive atmosphere of responsibility. Individuals who become intoxicated should not be allowed to continue to pressure licensees' staff for more alcoholic beverages. The Board does not anticipate any fiscal impact to it, but there could be some impact to local courts because of increased case load if law enforcement officers use the statute to any extent. Once the statute is recognized as effective, the frequency of use should decline as people would be less apt to violate the statute if they were going to be held accountable.

Sec. 7 deals with RCW 66.44.300 which prohibits treating minors to liquor in a public place where liquor is sold. The language corrects gender reference and makes it illegal for someone to represent someone else as being of legal drinking age to an employee or law enforcement officer/liquor control board agent. An example of where this is a problem is when someone who is 21 insists that a friend or companion is also 21 when, in reality that person is not. Currently the law says it is illegal to represent that person as being 21 to the owner of the establishment. The Board's recommendation would also cover employees of the business as well as law enforcement or board officers.

Sec. 8 would amend RCW 66.44.310 and allow the Board to declare certain portions of a licensed premises as off-limits to persons under the age of 21. There are portions of premises which are set aside for the purposes of alcoholic beverage consumption only. These areas have been declared off-limits in the past, but our legal counsel advises the Board does not have the statutory authority to make that determination and that this change is needed in order to continue to set aside these areas. We are talking about areas that are specifically for drinking, not areas where minors would be frequenting for games, eating etc. There is no fiscal impact to this section if it is adopted. It is needed to provide the Board with the appropriate authority to do what has been done for years and until a couple of years ago was thought to be legal. This has been approved during the past two years by one house, but has died on the other side as a victim of politics.

Sec. 9 covers RCW 66.44.350 which specifies what persons under 21 years of age can do upon a licensed premises. Currently 18, 19 and 20 year olds can seat patrons, deliver phone messages and food orders and perform duties other than working as bartenders or cocktail servers. They may enter these off-limit areas to pick up drink orders and deliver those to patrons seated within the restaurant portion of the premises. The Board believes it to be a matter for legislative discussion that the limitation be lifted on 18, 19 and 20 year olds performing all functions within the liquor-service areas. This could be controversial in that some may see this as allowing minors into areas heretofore set aside for adults only. It is felt eliminating the prohibition for work within the off-limits area would prevent much confusion on the part of law enforcement as to who can and cannot be within the area and also avoid interpretations as to what can be done by whom by Board agents. There is no fiscal impact to this proposal. Opponents might suggest this could enhance or facilitate minors entering off-limits areas because peers would be working as bartenders, cocktail servers and door checkers. Proponents could be liquor licensees who could see this as a major new labor pool. There should be no fiscal impact if this is adopted.

2. DEBIT/CREDIT CARD ACCEPTANCE (Z- 0997.1/94)

Z-0997.1 allows the Board to accept debit or credit cards for purchases from state liquor stores and agencies. This proposal addresses the acceptance of cards by the Board and provides for the administrative costs thereof to be considered the same as the purchase of liquor from suppliers. As you are aware, Chapter 500, Laws of 1993, authorized OFM to permit agencies to accept credit cards as payment for services or materials. The WSLCB is in the unusual position in that RCW 66.16.040 specifically limits the Board to accepting cash for liquor purchases. The Board has interpreted that checks were identical to cash, but our counsel advises acceptance of credit cards requires legislative action. (The Board had explored conducting a test to evaluate acceptance, but even a test would require legislative approval.) The Board sees such usage as beneficial to travelers who visit our state and wish to make purchases while here. Many are unaware of the cash-only requirement. The Board does not see introduction of debit/credit cards into the system as detrimental to public policy because the cards will not encourage consumption or sales, just make existing sales more convenient for those who may not happen to have cash or the availability of local banks. The Board also sees this action as one way to decrease the number of checks which are refused payment because of insufficient funds. (Total annual losses from such checks amounts to \$ 107,000.) There is another possibility that less cash in the stores as a result of credit cards being used could be less incentive for robberies to occur. In addition, credit cards are already being used to purchase liquor in restaurants and other licensed establishments and our patrons are demanding the same services in our liquor stores.

The fiscal note indicates a negative impact of \$590,000 per annum as a result of discount and monthly line charges for credit card equipment. During a discussion with the Trade and Economic Development people, we have been advised there are about 34 million tourists each year who are within our state. If, using current proportions, 70 percent of those are adults (over 21), then the Board would need to sell one 750ml bottle to one out of every 92 such tourists in order to cover the cost of providing the service. (Average bottle markup = \$2.29 times 258,079 750ml bottles) The Board does not perceive this as a stimulant for sales, but rather as answering the requests of would-be customers in terms of convenience. Projections as to total sales are not indicated on the fiscal note as all we have available are the guesstimates as indicated in this narrative.

3. PRICE POSTINGS FLEXIBILITY (Z-1075.1/94)

In Z-1075.1, the Board would like to modify RCW 66.28.180 to allow for price postings to be eliminated if an automated system now in development proves effective. This is a paperwork process which involves processing price postings filed by wholesalers and manufacturers. Periodic, random sampling would reduce the need for the number of FTE's and a labor intensive operation could be eliminated. Wholesalers use the information to ascertain what competitors prices will be during a specific time period. The Board rarely uses the information it gathers except in those instances where complaints are received as to one person selling below cost. With the automated system, prices reported by manufacturers and wholesalers could be easily reviewed without a significant involvement of human resources merely to review and file monthly hard copy reports as is currently the case. While it is anticipated this could be controversial as the Beer and Wine Wholesalers are not favorable to the cessation of the current practice, there comes a time when the agency must evaluate the proper utilization of its resources. An automated system will be far better with less human resource requirements. Staff would not be eliminated as those currently assigned to this function would be reassigned as license technicians processing applications, requests for modifications to existing licenses and other licensing-related services thus improving the Board's overall service to the citizens. Thus an area where the Board's workload is increasing would be properly staffed with no additional costs for FTE's simply to deliver called for services by applicants and licensees.

4. ELIMINATION OF REVENUE STAMP REQUIREMENT (Z-1076.1/94)

Another proposal (Z-1076.1/94) repeals revenue stamps on malt beverages. These have not been used for many years, yet the law remains on the books that such stamps shall be affixed onto packages or barrels of malt liquor. The statute (RCW 66.24.300) provides for the Board to waive the use of such stamps so long as it collects the tax due via other alternative methods. The Board would ask that this requirement for stamps period, be removed so as to allow the Board to destroy existing stocks of old stamps and eliminate an extremely archaic requirement. There should be no opposition to this as the stamps

have not been used for many years and the presence of the law on the books only serves to be a source of confusion from time-to-time. There is no fiscal impact to this proposal and it is more accurately described as housekeeping.

5. MANDATORY SERVER/SELLER TRAINING (Z-1073.1/94)

The last proposal the Board has to submit (Z-1073.1) creates mandatory alcohol server training. As you may recall, this has been around in one form or another for several years. Originally, it was part of the omnibus drug act. Because of costs, labor problems, and other issues, the bill has died in subsequent sessions. Last year, the House Commerce and Labor Chair had a proposal which involved virtually every facet of the liquor service industry. We believe we have eliminated most of the "hang-ups" which existed in the past and yet have been able to develop something which will be of help in making training available to all servers at a reasonable cost with very little inconvenience to anyone.

We have been encouraged by Senator Prentice to seek this as agency-request as broad-based training on the proper way to check identification and reduce sales to intoxicated persons would go far in helping the alcohol abuse problems we face. In the past, the thrust has been two-fold on mandatory server training; one objective was to accomplish statewide training of approximately 150,000 servers/sellers/handlers of alcoholic beverages and the second objective was to devise a way to hold such individuals more accountable for overservice or sales to minors by having a license which could be penalized administratively.

The current version eliminates the licensure requirement and mandates that individuals must complete appropriate training and such completion is recognized by the issuance of a card of completion. Labor's concerns of requiring "licenses" to handle alcoholic beverages would be eliminated. The "threat" of administrative sanctions against such licensees would be eliminated and the additional cost for licensure with associated FTE's would be non-existent. It is far from the ideal, but at least these people who serve and sell such a dangerous commodity would be required to understand some basics before they embark on their careers. In this instance, something is far better than nothing and right now, there is a voluntary program taught by Liquor Control Board agents attended by an average of 20,000 persons each year. Further, there are industry-sponsored programs which are more extensive and cost individual attendees up to \$30 that are available to those who wish to receive further training. Oregon has had mandatory training for on-premises servers/sellers for several years and the program appears to be beneficial in terms of bringing about more responsible sales and service. Efforts to expand that program to off-premises licensees (grocery stores, etc.) have failed due to heavy opposition by that segment of the beverage alcohol industry. Costs for our proposal would mean minimal increases of approximately \$ 25 to all liquor licensees on the annual license fees. For this increase, licensees would receive a state-produced videotape, study guide and key

question quiz to help guide new employees through the proper procedures. Agents would still be available to assist training programs as needed, but much of what would be done would be through video. Industry programs would still be available and useful in order to increase awareness of marketing techniques, advanced explanations of the physiological effects of alcohol on the human body and good management practices.

The program would be revised on a regular schedule (probably every three years) in order to keep servers/sellers and licensees updated on recent statutory changes. The increased license fees would provide revenue for the production of updated programs and cover the costs for duplication and distribution to all licensees for their own "refresher" programs. This proposal will allow licensees to schedule training at their convenience at virtually no cost to their people. There is an initial investment licensees would need to make in terms of covering costs of existing staff training, but thereafter, new employees could expect to complete the training prior to being placed on the payroll.

Sections 3, 4 and 5 make corrections to existing statutes by changing the references to the "definitions sections" of RCW 66.04.010 which changed numerically when "alcohol seller" was inserted as a new section (2). We have made some hand-written changes to reflect last minute modifications which were minor and would have only delayed the process had we waited for another Code Reviser revision. Notably, these changes are on page 6 at the end of line 23 where we add language making the increased license fee for alcohol server training exempt from the normal distribution schedule so the entire amount can be used to fund the program. We also started the license fee increase effective July 1, 1994 with the actual implementation of issuing completion certificates effective July 1, 1995. In this manner, funding for the program is accomplished through the added fees with only the first year's startup costs exceeding anticipated revenues. Thereafter, the program would be self-supporting.

PROPOSERS/OPPOSERS:

Z-1074 Omnibus License/Enforcement

Sec. 1. RCW 66.20.200

Pro: Licensees, law enforcement, alcohol moderation organizations

Con: ACLU, anti-government/anti-regulation organizations

Sec. 2. RCW 66.24.350

Pro: Class D licensees

Con: Persons opposed to consumption of alcohol on licensed golf courses.

Sec. 3. RCW 66.24.490

Pro: Class A, C and D licensees

Con: Class H licensees

(Note: Class B licensees - taverns - may want to be included in this proposal and that is a policy issue the legislature must determine.)

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Z-1074.1 (continued)

Sec. 4 RCW 66.28.070

Pro: Special occasion licensees

Con: None anticipated

Sec. 5. RCW 66.28.140

Pro: Home brewers

Con: Anti-alcohol organizations who wish not to see liquor recognized as hobby-type activity.

Sec. 6. RCW 66.44.200

Pro: Licensees, law enforcement, moderation organizations.

Con: ACLU, possibly social service agencies as attempting to purchase or consume while apparently intoxicated would be considered a crime.

Sec. 7. RCW 66.44.300

Pro: Licensees, law enforcement, WASPC, prosecutors

Con: None anticipated.

Sec. 8. RCW 66.44.310

Pro: Law enforcement, some licensees

Con: Some licensees who do not want to restrict areas. Anti-government/anti-regulation groups.

Z-1074.1 - Proponents/Opponents (continued)

Sec. 9. RCW 66.44.350

Pro: Licensees, some law enforcement organizations

Con: Some law enforcement organizations, alcohol moderation groups.

Z-0997 Debit/Credit Card Acceptance

Pro: Travelers, hospitality industry, financial institutions, Board employees.

Con: Alcohol moderation groups

Z-1075 Price Postings Flexibility

Pro: Some industry members. WSLCB

Con: Beer and Wine Wholesalers Association

Z-1076 Elimination of Revenue Stamps for Malt Liquor

Pro: WSLCB

Con: None anticipated

Z-1073 Mandatory Server/Seller Training

Pro: WSLCB, some licensees, alcohol moderation groups, law enforcement.

Con: Some licensees, organized labor, anti-government/anti-regulation groups.

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